

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D. N.Y.

★ AUG 8 2019 ★

BROOKLYN OFFICE

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DANIA BUESO AND FREDY BUESO, on behalf of
themselves and other persons similarly situated,

Plaintiff(s),

-against-

JENNINGS GATE RESTAURANT INC., D/B/A
STORYVILLE AMERICAN TABLE SANDRA FINELY
AND SHANNON FINLEY, In their individual capacities

Defendant(s).

VITALIANO, D.J.

Plaintiffs Dania Bueso and Freddy Bueso commenced this action on January 19, 2018, against defendants Jennings Gate Restaurant Inc., Sandra Finley and Shannon Finley alleging violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA") on behalf of themselves and all currently situated current and former employees who opt into the action pursuant to 29 U.S.C. § 216(b), as well as under the New York Labor Law Article 19, §650 et seq., and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142 ("New York Labor Law"). Dkt. 1, *as amended* Dkt. 6. Plaintiffs sought to further amend or supplement the complaint (Dkt. 41) on October 16, 2018 and the parties participated in an unsuccessful mediation. After the case was transferred to this Court on March 8, 2019, the Magistrate Judge Roanne L. Mann conducted settlement conferences with the parties. The parties accepted the Court settlement proposal and subsequently, the Court referred the motion to supplement the complaint (Dkt. 41) and the motions to certify a class (Dkt. 64, Dkt. 66) to Magistrate Judge Mann for a Report & Recommendation. *See* Order Referring Motion, dated

June 24 2019; Order Referring Motion, dated July 11 2019. Judge Mann issued her Report & Recommendation on the motion to certify a class (Dkt. 66) on July 29, 2019. Dkt. 69 ("R&R"). The R&R recommends that revised Order Preliminarily Approving Proposed Class Action Settlement (July 26, 2019) (Dkt. 68-3, annexed hereto) be granted and the revised Notice of Proposed Class Action Settlement (July 26, 2019) (Dkt. 68-2, annexed hereto) be approved.

Judge Mann concluded that the proposed settlement is a free and reasonable resolution of the action and the proposed class settlement warrants preliminary approval pursuant to *Cheeks v. Freeport Pancake House, Inc.* 796 F.3d 199 (2d Cir. 2015). Judge Mann further concluded that under the relevant factors under Rule 23 of the Federal Rules of Civil Procedure, the class certification and terms of the proposed class settlement are appropriate. (R&R at 2-3).

Notice of time to object to the R&R was given, but no party has objected within the prescribed time to do so. *See* R&R at 3.

Discussion

Where no party has objected to a report and recommendation, clear error review applies. *See Dafeng Hengwei Textile Co. v. Aceco Indus. & Commercial Corp.*, 54 F. Supp. 3d 279, 283 (E.D.N.Y. 2014). Having carefully reviewed the R&R in accordance with this standard, the Court finds it to be correct, well-reasoned and free of any clear error. The Court, therefore, adopts the R&R, in its entirety, as the opinion of the Court.

Conclusion

For the foregoing reasons, the R&R is adopted, in its entirety, as the opinion of the Court. The Court preliminarily approves the Class Action Settlement (Dkt. 68-3, annexed hereto), and approves the revised Notice of Proposed Class Action Settlement. The fairness hearing is respectfully referred to Judge Mann to be held on a date to be determined by Judge Mann.

So Ordered.

Dated: Brooklyn, New York
August 7, 2019

/s/ USDJ ERIC N. VITALIANO

ERIC N. VITALIANO
United States District Judge